

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 02-0555
ADJUSTED GROSS INCOME TAX
For 1997**

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ISSUES

I. Adjusted Gross Income Tax—Exemption for taxes paid to another state

Authority: IC § 6-8.1-5-4; 1997 IT-40

Taxpayer protests the proposed assessments of Indiana's adjusted gross income tax.

STATEMENT OF FACTS

The Department was contacted by taxpayer regarding a warrant for a 1997 tax assessment. Review of his records indicated that the warrant may have been issued improperly and was consequently expunged by the department, but also indicated that while earning income in Indiana, taxpayer was reporting his residence as South Carolina and indicated on his return that he was claiming credit for the taxes paid to South Carolina. Taxpayer protested that despite a residence and office in Indiana, he earned the income for the year at issue in South Carolina and had filed and paid taxes in South Carolina on the income in question. A hearing was held on January 29th, 2003 and taxpayer made these assertions and offered to provide documentation to support them. Taxpayer failed to provide documentation on this matter, and an inquiry with the South Carolina Department of Revenue- as well as a criminal investigation conducted by the Indiana Department of Revenue concurrent to this protest- found no evidence to support taxpayer's contention.

I. Adjusted Gross Income Tax—Exemption for taxes paid to another state

DISCUSSION

Taxpayer asserted that due to his payment of taxes to South Carolina, he did not owe taxes to the state of Indiana. The income in question was originally sourced to Indiana by the Department of Revenue based on information in the taxpayer's Federal returns. Taxpayer failed to respond to notices as to this assessment until after a warrant was issued. Since the Department could not confirm that the issuance of the warrant was procedurally correct, it was expunged and a protest was granted. An inquiry to the South Carolina Department of Revenue indicates that taxpayer

did not file a 1997 South Carolina individual income tax return, nor did he file an extension. His Indiana IT-40 filed in 1997 stated that he had paid \$2,307 as taxes paid outside of Indiana. Taxpayer reported this on Line 1 of Schedule 2, Indiana Credits, which states “Credit for Local Taxes Paid Outside Indiana (see page 19).” The page 19 reference states in relevant part:

Line 1 - Credit for Local Taxes Paid Outside of Indiana

If you figured county tax on Form IT-40, line 14, **and** had to pay a local income tax outside Indiana, you may be able to take a credit. This credit applies only if the tax you paid outside Indiana was to another city, county, town, or other local government, and they did not refund the tax or give you a credit for Indiana county tax. The credit can be used against the Indiana county tax figured if the tax is the County Adjusted Gross Income Tax (CAGIT) or County Option Income Tax (COIT). This credit **cannot** be claimed against the County Economic Development Income Tax (CEDIT). The *County Income Tax Chart* found on page 17 of this booklet lists the counties with their combined tax rates, if applicable.

The taxpayer did not mark the appropriate line on Schedule 2, Indiana Credits, under the scenario the taxpayer asserts. The line indicated by the taxpayer was explicitly for an offset of county taxes, not for the state liability. Line 4 of Schedule 2, Indiana Credits, states, “Credit for Taxes Paid to Other States: Attach other state’s return (see page 21).” This issue revolves around the burden of proof, which IC § 6-8.1-5-4 defines as:

Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person’s liability for that tax by reviewing those books and records. The records in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

Taxpayer does not cite any statute, regulation, or case law for the proposition that the Department was required to accept taxpayer’s assertions as to the nature of the transactions without any of the required supporting documentation. Under the facts that have been established, i.e., no return filed in South Carolina and an inaccurate and misleading completion of the Indiana return, the Department denies taxpayer’s protest.

FINDING

Taxpayer’s protest is denied.